

1 EDMUND G. BROWN JR., Attorney General  
of the State of California

2 JAMES LEDAKIS

Supervising Deputy Attorney General

3 RON ESPINOZA, State Bar No. 176908

Deputy Attorney General

4 110 West "A" Street, Suite 1100

San Diego, CA 92101

5

P.O. Box 85266

6 San Diego, CA 92186-5266

Telephone: (619) 645-2100

7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9

10 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12

13 In the Matter of the Accusation Against:

Case No. 2008-247

14 JAMES BERNARD MANNING

3535 Monroe Avenue, Unit 53

15 San Diego, CA 92116

**A C C U S A T I O N**

16 Registered Nurse License No. 582960

17

Respondent.

18

19 Complainant alleges:

20

PARTIES

21

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
solely in her official capacity as the Executive Officer of the Board of Registered Nursing,  
23 Department of Consumer Affairs.

24

25 2. On or about July 5, 2001, the Board of Registered Nursing (Board) issued  
Registered Nurse License No. 582960 to James Bernard Manning (Respondent). On or about  
26 January 15, 2002, the Board issued Nurse Practitioner No. 13118 to Respondent. On or about  
27 December 8, 2003, the Board issued Nurse Practitioner Furnishing No. 13118 to Respondent.

28 The registered nursing license and certifications were in full force and effect at all times relevant

1 to the charges brought herein, and will expire on February 28, 2009, unless renewed.

2 JURISDICTION

3 3. This Accusation is brought before the Board of Registered Nursing.  
4 Department of Consumer Affairs, under the authority of the following laws. All section  
5 references are to the Business and Professions Code (Code) unless otherwise indicated.

6 4. Section 2750 of the Code provides, in pertinent part, that the Board may  
7 discipline any licensee, including a licensee holding a temporary or an inactive license, for any  
8 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

9 5. Section 2761 of the Code states:

10 "The board may take disciplinary action against a certified or licensed nurse or  
11 deny an application for a certificate or license for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13 "...

14 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or  
15 abetting the violating of, or conspiring to violate any provision or term of this chapter [the  
16 Nursing Practice Act] or regulations adopted pursuant to it.

17 "(f) Conviction of a felony or of any offense substantially related to the  
18 qualifications, functions, and duties of a registered nurse, in which event the record of the  
19 conviction shall be conclusive evidence thereof.

20 "..."

21 6. Section 2762 of the Code states:

22 "In addition to other acts constituting unprofessional conduct within the meaning  
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
24 under this chapter to do any of the following:

25 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a  
26 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish  
27 or administer to another, any controlled substance as defined in Division 10 (commencing with  
28 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as

1 defined in Section 4022.

2 "...."

3 7. Section 482 of the Code states:

4 "Each board under the provisions of this code shall develop criteria to evaluate the  
5 rehabilitation of a person when:

6 "...."

7 "(b) Considering suspension or revocation of a license under Section 490.

8 "Each board shall take into account all competent evidence of rehabilitation  
9 furnished by the applicant or licensee."

10 8. Section 490 of the Code states:

11 A board may suspend or revoke a license on the ground that the licensee  
12 has been convicted of a crime, if the crime is substantially related to the  
13 qualifications, functions, or duties of the business or profession for which the  
14 license was issued. A conviction within the meaning of this section means a plea  
15 or verdict of guilty or a conviction following a plea of nolo contendere. Any  
16 action which a board is permitted to take following the establishment of a  
conviction may be taken when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal, or when an order granting probation is  
made suspending the imposition of sentence, irrespective of a subsequent order  
under the provisions of Section 1203.4 of the Penal Code.

17 9. Section 493 of the Code states:

18 Notwithstanding any other provision of law, in a proceeding conducted by  
19 a board within the department pursuant to law to deny an application for a license  
20 or to suspend or revoke a license or otherwise take disciplinary action against a  
21 person who holds a license, upon the ground that the applicant or the licensee has  
22 been convicted of a crime substantially related to the qualifications, functions, and  
23 duties of the licensee in question, the record of conviction of the crime shall be  
conclusive evidence of the fact that the conviction occurred, but only of that fact,  
and the board may inquire into the circumstances surrounding the commission of  
the crime in order to fix the degree of discipline or to determine if the conviction  
is substantially related to the qualifications, functions, and duties of the licensee in  
question.

24 As used in this section, 'license' includes 'certificate,' 'permit,'  
'authority,' and 'registration.'

25 10. California Code of Regulations, title 16, section 1445, states:

26 "...."

27 (b) When considering the suspension or revocation of a license on the  
28 grounds that a registered nurse has been convicted of a crime, the board, in  
evaluating the rehabilitation of such person and his/her eligibility for a license will

1 consider the following criteria:

- 2 (1) Nature and severity of the act(s) or offense(s).
- 3 (2) Total criminal record.
- 4 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 5 (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- 6 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- 7 (6) Evidence, if any, of rehabilitation submitted by the licensee.

8 11. California Code of Regulations, title 16, section 1444, states:

9 A conviction or act shall be considered to be substantially related to the  
10 qualifications, functions or duties of a registered nurse if to a substantial degree it  
11 evidences the present or potential unfitness of a registered nurse to practice in a  
12 manner consistent with the public health, safety, or welfare. Such convictions or  
13 acts shall include but not be limited to the following. . . .

#### 14 COST RECOVERY

15 12. Section 125.3 of the Code provides, in pertinent part, that the Board may  
16 request the administrative law judge to direct a licensee found to have committed a violation or  
17 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
18 and enforcement of the case.

#### 19 FIRST CAUSE FOR DISCIPLINE

20 (August 15, 2006 Criminal Conviction—

#### 21 **Unlawful Possession of Controlled Substance While Armed With Firearm)**

22 13. Respondent is subject to disciplinary action under Code sections 490 and  
23 2761, subdivision (f), for a criminal conviction that is substantially related to his qualifications,  
24 functions, and duties as a registered nurse. The circumstances are as follows:

25 a. On or about January 24, 2006, Respondent unlawfully possessed  
26 methamphetamine while armed with a loaded, operable firearm, in violation of Health and Safety  
27 Code section 11370.1, subdivision (a).

28 b. On or about August 15, 2006, in a criminal proceeding entitled  
*People of the State of California v. James Bernard Marming*, in San Diego County Superior  
Court, Case No. SCD196574, Respondent was convicted by his plea of guilty of violating Health  
and Safety Code section 11370.1, subdivision (a) [unlawful possession of a controlled substance

1 while armed with a firearm], a felony.

2 c. On or about August 15, 2006, Respondent was sentenced as  
3 follows: imposition of sentence suspended and Respondent placed on probation for a period of  
4 three years. Respondent was also ordered to serve two days in jail (credit given for time served  
5 of two days), enroll in and complete a substance abuse program, and pay fines and fees.

6 d. On or about November 21, 2006, Respondent's probation was  
7 formally revoked for failure to comply with the Court's treatment program order. Respondent's  
8 probation was reinstated and modified to extend his probation until November 20, 2009.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct – Unlawful Possession of a Controlled Substance)**

11 14. Respondent is subject to disciplinary action under Code section 2761,  
12 subdivision (a), on the grounds of unprofessional conduct as described in Section 2762,  
13 subdivision (a), in that he possessed in violation of law a controlled substance  
14 (methamphetamine) as set forth in paragraph 13 above and hereby incorporated by reference.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
17 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse License No. 582960, Nurse  
19 Practitioner No. 13118, and Nurse Practitioner Furnishing No. 13118 issued to Respondent  
20 James Bernard Manning;

21 2. Ordering James Bernard Manning to pay the Board of Registered Nursing  
22 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
23 Professions Code section 125.3; and

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 2/15/08

Ellie Hoberg for  
RUTH ANN TERRY, M.D.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SD2007802206  
80205582.wpd

ORIGINAL

I hereby certify that the foregoing instrument is a full, true & correct copy of the original on file in this office, that said document has not been revoked, annulled or set aside, and it is in full force and effect.

SEP 24 2007

Attest: \_\_\_\_\_, Clerk of the Superior Court of the State of California, in and for the County of San Diego

Clerk of the Superior Court

By Bud Marshall Deputy SEP 24 2007

By: T. Marshall, Deputy

SEP 1 2007

*Cancelled*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JAMES BERNARD MANNING,  
DOB 01/12/63

Defendant.

Case No. SCD205299

**[PROPOSED] ORDER GRANTING  
APPLICANT'S RECOMMENDATION  
FOR PROHIBITING DEFENDANT  
FROM PRACTICING NURSING**

**[Penal Code § 23]**

DATE: September 24, 2007

TIME: 8:30 a.m.

PLACE: 220 W. Broadway  
San Diego, CA 92101

DEPT: 31

RUTH ANN TERRY, M.P.H., R.N.  
EXECUTIVE OFFICER  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA,

Applicant.)

The Application of Ruth Ann Terry, M.P.H., R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California, under the authority of Penal Code section 23, to recommend that this Court prohibit defendant from practicing as a registered nurse pending administrative proceedings, having been heard on September 24, 2007, the Court having received and considered the Notice of Appearance and Recommendation by State Licensing Agency and accompanying points and authorities, the declaration of Deputy Attorney General Ron Espinoza with exhibits, and oral argument, and good cause having been shown; determines that the public health, safety or

1 welfare will be endangered unless the order is issued, and hereby grants the Application and  
2 makes the following order:

3 **IT IS HEREBY ORDERED THAT** defendant James Bernard Manning, Registered  
4 Nurse License No. 582960, is prohibited from practicing or attempting to practice nursing while  
5 this criminal case is pending, and while he is on any probation ordered by this Court as part of  
6 sentencing, and until any disciplinary action that is filed by the State Board of Registered Nursing  
7 against him related to the underlying criminal charges in this case becomes final.

8  
9 DATED: 2/24/07

10   
11 JUDGE OF THE SUPERIOR COURT  
12 DAVID J. DANIELSEN  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 **DECLARATION OF SERVICE BY FACSIMILE**

2 Case Name: **People v. James Bernard Manning**  
3 No.: **SCD205299**

4 I declare:

5 I am employed in the Office of the Attorney General, which is the office of a member of the  
6 California State Bar at which member's direction this service is made. I am 18 years of age or older  
7 and not a party to this matter; my business address is 110 West "A" Street, Suite 1100, San Diego,  
8 California 92101. I am familiar with the business practice at the Office of the Attorney General for  
collection and processing of correspondence for mailing with the United States Postal Service. In  
accordance with that practice, correspondence placed in the internal mail collection system at the  
Office of the Attorney General is deposited with FedEx that same day in the ordinary course of  
business. My facsimile machine telephone number is (619) 645-2061.

9 On September 17, 2007, at 12:41 p.m., I served the attached

10 1. **[PROPOSED] ORDER GRANTING APPLICANT'S**  
11 **RECOMMENDATION FOR PROHIBITING DEFENDANT**  
**FROM PRACTICING NURSING**

12 by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306.  
13 The facsimile machine I used complied with Rule 2.301, and no error was reported by the machine.  
14 Pursuant to rule 2.306(g)(4), I caused the machine to print a record of the transmission, a copy of  
which is attached to this declaration. In addition, I placed a true copy thereof enclosed in a sealed  
envelope with postage thereon fully prepaid with FedEx, addressed as follows:

15 Nicholas DePento, Esq.  
16 Law Office of Nicholas DePento  
17 550 W "C" St #1160  
18 San Diego, CA 92101  
**Fax No. (619) 236-1389**  
*Attorney for James Bernard Manning*

19 In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereon fully  
20 prepaid with FedEx, addressed as follows:

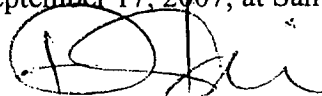
21 James Bernard Manning  
22 3335 Monroe Ave., Unit 53  
23 San Diego, CA 92116

Patricia Herian  
Deputy District Attorney  
District Attorney's Office  
330 West Broadway  
San Diego, CA 92101

24 I declare under penalty of perjury under the laws of the State of California the foregoing is true and  
25 correct and that this declaration was executed on September 17, 2007, at San Diego, California.

26 R. STEIN

27  
28  
Declarant



Signature